

		Page 34	Page 36
11:17:04 1	thinks he just doesn't hear a car count? He's not	11:19:40 1	A. It's just by the way, the way it feels as
11:17:08 2	hearing anything?	11:19:46 2	you're moving the cars around. In an operator's
11:17:08 3	MR. NEUER: Form.	11:19:52 3	training he brakes throughout the process of stopping.
11:17:12 4	A. Yes.	11:20:00 4	Brakes and advances his throttle to keep or maintain a
11:17:12 5	Q. (BY MR. COLLINS) Okay. When would it be	11:20:04 5	constant speed.
11:17:14 6	proper for him to stop?	11:20:56 6	Q. Did you take the pictures?
11:17:16 7	A. At or before half the distance.	11:21:00 7	A. No.
11:17:20 8	Q. Okay. Can he keep -- can the operator keep	11:21:00 8	Q. Do you know who took pictures at the accident
11:17:22 9	track of half the distance or does he have to be told	11:21:02 9	scene?
11:17:26 10	what half the distance is?	11:21:02 10	A. No, I don't.
11:17:30 11	MR. NEUER: Form.	11:21:12 11	Q. Is there any -- on the ladder track is there
11:17:30 12	Q. (BY MR. COLLINS) I mean, is there a way for	11:21:16 12	any markers on there to help you determine distance or
11:17:32 13	him to determine he's moved half the distance	11:21:22 13	what point something is stopped or anything? Like the
11:17:36 14	independently of what he's being told on the radio?	11:21:26 14	equivalent I would have is like a mile marker on the
11:17:38 15	A. Yeah, just by watching outside the window of	11:21:28 15	freeway, is there any kind of markers on there?
11:17:42 16	the locomotive he knows approximately how far a car	11:21:50 16	A. No, sir.
11:17:42 17	length is.	11:21:50 17	Q. Okay. With particular the cars that were
11:17:48 18	Q. Okay. On a stop -- on a shove of about ten	11:21:52 18	being moved when Alex was injured, do you know where
11:17:52 19	cars, typically the operator would start applying the	11:21:56 19	those cars were -- what was being done with those cars
11:17:58 20	brakes when five cars had been moved, correct?	11:21:58 20	and where they were destined at that point?
11:18:02 21	MR. NEUER: Form.	11:22:06 21	A. No, sir.
11:18:02 22	A. No.	11:22:06 22	Q. What would be the best information to look at
11:18:02 23	Q. (BY MR. COLLINS) When would he typically	11:22:08 23	to determine that?
11:18:04 24	apply the brake?	11:22:10 24	A. It would be a switch list.
11:18:06 25	A. It would depend on too many factors to answer	11:22:14 25	Q. Okay. What on the switch list would tell me?
		Page 35	Page 37
11:18:06 1	that question.	11:22:16 1	A. There would be a note on the -- next to the
11:18:06 2	Q. What factors would it depend on?	11:22:20 2	car number being what classification it was.
11:18:08 3	A. Grade, tonnage, locomotive size.	11:22:20 3	(Plaintiff's Exhibit 5 marked.)
11:18:22 4	Q. At the Deer Park Rail Terminal where this	11:23:00 4	Q. (BY MR. COLLINS) I want to hand you what's
11:18:24 5	accident occurred what's the grade?	11:23:02 5	been marked as Plaintiff's Exhibit Number 5.
11:18:26 6	A. I have no idea.	11:23:06 6	A. Okay.
11:18:30 7	Q. Okay. Do you know what the tonnage of the	11:23:06 7	Q. Can you identify that document for me?
11:18:30 8	cars that were being moved at the time of the accident	11:23:08 8	A. Yes, it's a switch list from Deer Park Rail
11:18:32 9	were?	11:23:12 9	terminal.
11:18:32 10	A. No, sir.	11:23:14 10	Q. Okay. And how do you know that's a switch
11:18:36 11	Q. And what is the locomotive size?	11:23:14 11	list from Deer Park? I'm going to ask some kind of
11:18:38 12	A. It's a 1500 horsepower switcher.	11:23:18 12	obviously stupid questions right here, but I just want
11:18:52 13	Q. Would Devon Stroud at the time of the accident	11:23:22 13	to make sure I can read this properly. How do you know
11:18:54 14	before he started the move need to know the tonnage	11:23:28 14	it's a switch list from the Deer Park Rail Terminal?
11:18:58 15	before he started the move?	11:23:32 15	A. Because I see the DPRT, Deer Park Rail on top.
11:19:00 16	A. No, sir.	11:23:36 16	Q. And the switch date and report date, that
11:19:04 17	Q. Okay. What about the grade?	11:23:38 17	would be 4-04-05, right?
11:19:04 18	A. He would be familiar with the grade by	11:23:42 18	A. That's correct.
11:19:08 19	operating in that facility. He wouldn't know the	11:23:42 19	Q. And that would be the date which was April
11:19:12 20	degree of grade.	11:23:44 20	4th, '05?
11:19:16 21	Q. Okay. Why wouldn't he need to know the	11:23:46 21	A. Yes, sir.
11:19:18 22	tonnage?	11:23:50 22	Q. Okay. And you go down and it says car number
11:19:20 23	A. There's no way for him to know that.	11:23:52 23	20, it's circled, car -- and in handwriting it's car
11:19:36 24	Q. So, without knowing the tonnage, when does he	11:24:00 24	GATX 040494 was the car that Alex was riding on. Do
11:19:38 25	know to brake?	11:24:06 25	you know who wrote that?

10 (Pages 34 to 37)

Page 38		Page 40	
11:24:08 1	A. I'm not sure.	11:26:12 1	MR. NEUER: Form.
11:24:08 2	Q. You don't recognize that handwriting?	11:26:14 2	A. I don't understand your question.
11:24:10 3	A. No.	11:26:16 3	Q. (BY MR. COLLINS) Okay. If you'll look at car
11:24:10 4	Q. Do you have any reason to dispute that was the	11:26:18 4	number 1 under yard, it's empty?
11:24:12 5	car he was riding on?	11:26:22 5	A. Uh-huh. Yes, sir.
11:24:14 6	A. No.	11:26:24 6	Q. Does that mean the car is supposed to stay
11:24:16 7	Q. Okay. And what is the -- is there any kind of	11:26:26 7	there?
11:24:20 8	classification that lets you know where that car was	11:26:28 8	A. No. That means the car is empty.
11:24:22 9	headed?	11:26:30 9	Q. No, no, no. Number 1, it says yard and
11:24:26 10	A. No, sir, I don't, I don't know exactly what	11:26:32 10	there's nothing written in that column. See that
11:24:28 11	destination 222 is.	11:26:36 11	column at the top?
11:24:30 12	Q. But 222 tells you where -- whether that car is	11:26:38 12	A. Oh, the space is empty.
11:24:36 13	outbound or inbound for storage?	11:26:40 13	Q. Yeah, the space is empty.
11:24:38 14	A. It would be outbound.	11:26:40 14	A. Okay. I thought you meant the car. I'm
11:24:40 15	Q. Okay. It's outbound. Outbound to where?	11:26:42 15	sorry.
11:24:42 16	A. I don't know.	11:26:42 16	Q. I thought I was going crazy.
11:24:44 17	Q. Okay. And where -- what does the designation	11:26:46 17	A. That means at the time that car does not ship
11:24:46 18	GATX stand for?	11:26:48 18	outbound.
11:24:50 19	MR. NEUER: Form.	11:26:48 19	Q. Okay. And, so, that's why there's no track
11:24:50 20	A. That's the prefix of the railcar.	11:26:50 20	destination?
11:24:54 21	Q. (BY MR. COLLINS) Okay. And prefix for the	11:26:52 21	A. That is correct.
11:24:54 22	railcar, is that to depict who owns the railcar?	11:26:52 22	Q. What does the spot destination mean?
11:25:00 23	A. I suppose.	11:26:58 23	A. If that car was to go to spot, but there's
11:25:02 24	Q. Okay. Do you know what GATX stands for, what	11:27:02 24	nothing signified on the switch list.
11:25:06 25	company?	11:27:02 25	Q. I thought I was going crazy for a minute. Do
Page 39		Page 41	
11:25:08 1	A. No, sir.	11:27:02 1	you know --
11:25:08 2	Q. What is -- next column it says CS and it has	11:27:02 2	A. That means at the time that car does not ship
11:25:12 3	PE in it. What does that mean, do you know?	11:27:02 3	outbound.
11:25:16 4	A. I'm not sure what that one is.	11:27:04 4	Q. Okay. And, so, that's why there's no track
11:25:20 5	Q. Next column says L.E. has an E in it, do you	11:27:04 5	designation?
11:25:24 6	know what that is?	11:27:04 6	A. That is correct.
11:25:24 7	A. That would be empty.	11:27:04 7	Q. What does the spot designation mean?
11:25:26 8	Q. Empty?	11:27:04 8	A. If that car wants to go to spot, but there's
11:25:26 9	A. Loaded or empty, yes, sir.	11:27:04 9	nothing signified on the switch list.
11:25:28 10	Q. So, if I look up all the way in the column and	11:27:06 10	Q. And what's the spot?
11:25:30 11	these were indeed the cars that were in the line when	11:27:06 11	A. It would be the loading rack spot, the fuel
11:25:34 12	Alex was hurt, all of them were empty, correct?	11:27:10 12	rack spot.
11:25:38 13	A. Yes, sir, that's what the switch list shows.	11:27:12 13	Q. Okay. And then the fleet, ID numbers, GATX
11:25:40 14	Q. Okay. And you don't know the column before,	11:27:16 14	and the business group is GATX, so that's who owns the
11:25:42 15	what the PE or HE stands for?	11:27:18 15	car?
11:25:46 16	A. I'm not sure what that is, no.	11:27:20 16	A. Right.
11:25:46 17	Q. Do you know what that column is supposed to	11:27:20 17	MR. NEUER: Form.
11:25:48 18	tell you, though, as far as CS?	11:27:22 18	Q. (BY MR. COLLINS) Right?
11:25:52 19	A. I'm not sure what CS signifies.	11:27:22 19	A. I suppose.
11:25:56 20	Q. Okay. And the next column over it says yard.	11:27:24 20	Q. And then the last column says U N N A N O, do
11:25:58 21	What is that referring to?	11:27:28 21	you know what that stands for?
11:26:02 22	A. That means Deer Park out.	11:27:30 22	A. Yes, sir, that would be the placard number.
11:26:04 23	Q. Okay. And some of these are empty. Do you	11:27:34 23	Q. Okay. And the placard appears on the car
11:26:08 24	know what that means? If they don't -- they're going	11:27:36 24	itself?
11:26:10 25	to stay there?	11:27:36 25	A. Yes.

11 (Pages 38 to 41)

Page 42		Page 44	
11:28:34 1	(Plaintiff's Exhibit 6 marked)	11:31:08 1	there at the time?
11:28:34 2	Q. (BY MR. COLLINS) I'm going to hand you what's	11:31:10 2	A. That's correct.
11:28:36 3	been marked as Plaintiff's Exhibit Number 6. It's	11:31:12 3	Q. Okay. Do you know how far when that -- before
11:28:46 4	titled personal injury report signed by David Jones and	11:31:16 4	they started doing the shove back, how far the train
11:28:52 5	it has a map on the back or a diagram. Do you	11:31:22 5	moved from this track before it stopped?
11:28:58 6	recognize that document?	11:31:28 6	A. Evidently this diagram isn't to scale at all
11:29:00 7	A. Yes.	11:31:30 7	I don't have any clue.
11:29:02 8	Q. Okay. When is the first time you saw this	11:31:32 8	Q. Okay. Do you know where the starting point of
11:29:04 9	document?	11:31:34 9	the move was?
11:29:04 10	A. Yesterday.	11:31:36 10	A. I don't recall the track they came out of, no,
11:29:06 11	Q. How long did you -- what did you do to prepare	11:31:38 11	sir.
11:29:08 12	for your deposition today?	11:31:40 12	Q. Okay. But, I mean, do you know -- was it
11:29:14 13	A. Mr. Neuer prepared a notebook with some of	11:31:44 13	right at the end of the track that it came out of or
11:29:16 14	these same documents in it.	11:31:46 14	was it further down the track or do you know?
11:29:18 15	Q. Okay. What documents did you look at?	11:31:50 15	A. I don't understand your question.
11:29:20 16	A. The incident report, the personnel injury	11:31:52 16	Q. Okay. Let's kind of look at this together.
11:29:22 17	report, the diagram.	11:31:54 17	A. Okay.
11:29:28 18	Q. Okay. Had you looked at these before this	11:31:54 18	Q. Let's say we came off this first track and
11:29:30 19	time?	11:31:56 19	we're just going to call this track 1 --
11:29:32 20	A. No.	11:31:56 20	A. Okay.
11:29:32 21	Q. Okay. So, since the time of the accident and	11:32:00 21	Q. -- for the purposes of these questions. So,
11:29:36 22	your deposition today you haven't looked at any of the	11:32:02 22	they came on track 1 to the ladder track.
11:29:38 23	reports on this accident?	11:32:02 23	A. Uh-huh.
11:29:40 24	A. No.	11:32:04 24	Q. When they pulled these trains off, did it stop
11:29:40 25	Q. Okay. All right. I want you to turn to the	11:32:08 25	right there at the end of where track 1 meets the
Page 43		Page 45	
11:29:42 1	diagram. Just so I can make sure we understand this,	11:32:12 1	ladder track or did it go down here?
11:29:58 2	the main track going through the middle, do you	11:32:14 2	MR. NEUER: Form.
11:30:00 3	understand that to be what was called the ladder track?	11:32:14 3	A. I wasn't there. I have no way of answering
11:30:04 4	A. That's correct.	11:32:18 4	that how far they went past.
11:30:06 5	Q. Okay. And the track that's going off to the	11:32:18 5	Q. (BY MR. COLLINS) Do you have any information
11:30:08 6	left, the first one from the bottom of the page, do you	11:32:18 6	of how far they went? Does anyone have any information
11:30:12 7	know what track number that is?	11:32:20 7	on that issue?
11:30:16 8	A. No.	11:32:22 8	MR. NEUER: Form.
11:30:16 9	Q. What about the second track number?	11:32:22 9	A. I don't.
11:30:18 10	A. No.	11:32:24 10	Q. (BY MR. COLLINS) Okay. So, the move, there's
11:30:20 11	Q. Okay.	11:32:28 11	no way to determine where the move started?
11:30:20 12	A. I remember them being down in the area of the	11:32:32 12	MR. NEUER: Form.
11:30:22 13	740s, but I don't remember the exact track.	11:32:34 13	Q. (BY MR. COLLINS) In which Alex was injured,
11:30:26 14	Q. Okay. Are all these tracks the same distance	11:32:36 14	right?
11:30:32 15	apart, the ones that go off to the left of the ladder	11:32:36 15	A. I can't determine that.
11:30:36 16	track? I mean, is there equal distance between each	11:32:38 16	Q. Okay. Do you know anybody else that was able
11:30:38 17	track or does it vary?	11:32:40 17	to determine that?
11:30:40 18	A. I'm not sure.	11:32:42 18	MR. NEUER: Form.
11:30:44 19	Q. Okay. Can you tell me -- first of all, do you	11:32:42 19	A. The people on the crew would have known where
11:30:50 20	have an understanding that the cars that were being	11:32:44 20	they stopped.
11:30:54 21	moved had first been pulled off of this first track to	11:32:46 21	Q. (BY MR. COLLINS) I'm talking about where they
11:30:58 22	the left and then pulled on to the ladder track?	11:32:46 22	started, the exact --
11:31:02 23	A. I read that in the statement, yes.	11:32:48 23	A. Well, they would have started where they
11:31:04 24	Q. Okay. So, the only information you have is	11:32:50 24	stopped.
11:31:06 25	from the statement that was made by the people who were	11:32:50 25	Q. Okay. All right. So, the only people that

12 (Pages 42 to 45)

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		Page 46			Page 48
11:32:58	1	you know of that would know where -- when they pulled	11:39:56	1	end of the move which would have been the car Alex was
11:33:04	2	off track I and pulled on to the ladder track, where	11:40:00	2	on was from track 1, what we've described as track 1?
11:33:06	3	that move stopped, the only people you know who would	11:40:06	3	MR. NEUER: Form.
11:33:10	4	know that information is the crew?	11:40:06	4	A. No, sir.
11:33:10	5	A. That's correct.	11:40:08	5	Q. (BY MR. COLLINS) Okay. So, no one measured
11:33:12	6	MR. NEUER: Form.	11:40:08	6	that distance as far as you can tell?
11:33:14	7	Q. (BY MR. COLLINS) Okay.	11:40:10	7	A. Not that I'm aware of.
11:33:14	8	A. The two ground men.	11:40:16	8	Q. Okay. Also, if Devon Stroud, you know, they
11:33:16	9	Q. Okay. And there's no way of going through any	11:40:20	9	started the shove and they were moving cars, if he
11:33:18	10	kind of records or recording data or anything to	11:40:24	10	braked at three cars, he was already into the shove
11:33:22	11	determine where that was?	11:40:28	11	three cars, would that be able to -- would that last
11:33:24	12	A. No, sir.	11:40:32	12	car stop on a dime or would there still be some
11:33:24	13	Q. Okay. Typically is there any kind of general	11:40:36	13	movement after the initial braking?
11:33:30	14	practice where they stop at the end of the rail or do	11:40:38	14	A. There would still be some movement.
11:33:32	15	they go down a little further?	11:40:40	15	Q. Okay. And how much movement would depend on
11:33:36	16	MR. NEUER: Form.	11:40:42	16	how hard he braked and how much he was -- how fast he
11:33:36	17	A. It depends on, like I mentioned before, the	11:40:46	17	was going and the tonnage and the grade?
11:33:38	18	stopping distance depends on speed, tonnage and grade.	11:40:50	18	A. Yes, sir.
11:33:52	19	Q. (BY MR. COLLINS) Okay. So, likewise, there's	11:40:50	19	Q. Right? Which we don't have any indication of
11:33:54	20	no way to determine exactly where the shove started	11:40:52	20	how fast Devon Stroud was moving, right?
11:33:58	21	where Alex was injured?	11:40:56	21	A. No, sir.
11:34:02	22	A. Correct.	11:40:56	22	Q. Okay. And we don't have any indication except
11:34:02	23	Q. Okay. There's no possible way to even try to	11:40:58	23	what testimony he may offer in this on how hard he
11:34:04	24	figure it out as far as you're concerned, right?	11:41:04	24	braked?
11:34:04	25	A. No, sir.	11:41:06	25	A. Correct.
		Page 47			Page 49
11:34:08	1	MR. NEUER: Form.	11:41:06	1	Q. Because there's degrees in which you can
11:34:10	2	Q. (BY MR. COLLINS) Okay. Except by the	11:41:08	2	brake, right?
11:34:10	3	testimony of people who were actually there?	11:41:10	3	A. Yes, sir, it's from zero to generally about 35
11:34:14	4	A. That's correct.	11:41:12	4	pounds of pressure.
11:34:18	5	Q. Okay. Did you draw this diagram?	11:41:18	5	Q. Okay. All right. Was there any indication
11:34:20	6	A. No.	11:41:24	6	that any of the hand brakes were applied to any of the
11:34:34	7	Q. Okay. I just want to make sure I'm clear.	11:41:30	7	cars that were involved in the move in which Alex was
11:34:36	8	Number 5 has an arrow going in there and it says SW	11:41:34	8	injured?
11:34:40	9	list?	11:41:34	9	A. Not that I'm aware of.
11:34:40	10	A. I believe that would be switch list.	11:41:36	10	Q. Okay. And, in fact, if you're doing -- if
11:34:42	11	Q. And that would have been the switch list	11:41:38	11	someone is doing a shove at the Deer Park Rail
11:34:46	12	someone would have been carrying that was found on the	11:41:44	12	Terminal, hand brakes are not supposed to be set on the
11:34:48	13	ground after the accident, right?	11:41:48	13	cars, correct?
11:34:50	14	A. That's correct.	11:41:48	14	A. As they're moving, no, sir.
11:34:50	15	Q. Okay.	11:41:50	15	Q. Okay. That's right. So, if you start a
11:36:14	16	MR. COLLINS: We can go off the record	11:41:52	16	shove, all the hand brakes are supposed to be off,
11:36:14	17	for a minute.	11:41:56	17	right?
11:36:16	18	THE VIDEOGRAPHER: It's 11:36, we're off	11:41:56	18	A. That's correct.
11:36:20	19	the record.	11:42:02	19	MR. COLLINS: Okay. I pass the witness.
11:39:38	20	(Brief recess.)	11:42:04	20	MR. NEUER: We will reserve our
11:39:38	21	THE VIDEOGRAPHER: Back on the record at	11:42:06	21	questions.
11:39:42	22	11:39.	11:42:06	22	THE VIDEOGRAPHER: It's 11:42, we're off
11:39:44	23	Q. (BY MR. COLLINS) Okay. I want to turn back	11:42:10	23	the record.
11:39:46	24	to Plaintiff's Exhibit Number 6. Is there anything on	24		
11:39:50	25	this diagram that tells me how far the first car -- the	25		

Page 50

1 CHANGES AND SIGNATURE
2
3 PAGE LINE CHANGE REASON
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Page 51

1 I, JAMES ORMS, have read the foregoing deposition
2 and hereby affix my signature that same is true and
3 correct, except as noted above.
4
5 JAMES ORMS
6
7 THE STATE OF)
8 COUNTY OF)
9 Before me, , on this day
10 personally appeared JAMES ORMS, known to me (or proved
11 to me under oath or through) (description of
12 identity card or other document) to be the person
13 whose name is subscribed to the foregoing instrument
14 and acknowledged to me that they executed the same for
15 the purposes and consideration therein expressed.
16
17 Given under my hand and seal of office
18 this day of , 2006.
19
20
21
22
23
24
25

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Page 52

1 CAUSE NO. 2005-38821
2 ALEJANDRO BENAVIDEZ) IN THE DISTRICT COURT OF
3)
4 VS.) HARRIS COUNTY, TEXAS
5)
6 RAILSERVE, INC) 24TH JUDICIAL DISTRICT
7 REPORTER'S CERTIFICATION
8 DEPOSITION OF JAMES ORMS
9 January 18, 2006
10 I, Jeanne C. Pearl, Certified Shorthand Reporter
11 in and for the State of Texas, hereby certify to the
12 following
13 That the witness, JAMES ORMS, was duly sworn by
14 the officer and that the transcript of the oral
15 deposition is a true record of the testimony given by
16 the witness,
17 That the deposition transcript was submitted on
18 , to the witness or to the attorney
19 for the witness for examination, signature and return
20 to me by ;
21 That the amount of time used by each party at the
22 deposition is as follows:
23 Mr. Wayne D. Collins - 1 HR. 1 MIN
24 That pursuant to information given to the
25 deposition officer at the time said testimony was
taken, the following includes counsel for all parties

Page 53

1 of record:
2
3 Mr. Wayne D. Collins, Attorney for Plaintiff;
4 Mr. Raymond A. Neuer, Attorney for Defendant.
5
6 I further certify that I am neither counsel for,
7 related to, nor employed by any of the parties or
8 attorneys in the action in which this proceeding was
9 taken, and further that I am not financially or
10 otherwise interested in the outcome of the action.
11 Further certification requirements pursuant to
12 Rule 203 of TRCP will be certified to after they have
13 occurred.
14 Certified to by me this 24th day of January,
15 2006.
16
17
18 JEANNE C. PEARL, Texas CSR 456
19 Expiration: 12/31/06
20 LEGALINK - HOUSTON
21 Firm Registration Number 210
22 1235 North Loop West, Suite 510
23 Houston, Texas 77008
24 (713) 426-0400
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14 (Pages 50 to 53)

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Page 54

1 FURTHER CERTIFICATION UNDER RULE 203 TRCP
2

3 The original deposition was/was not returned to
4 the deposition officer on _____;

5 If returned, the attached Changes and Signature
6 page contains any changes and the reasons therefor;

7 If returned, the original deposition was delivered
8 to _____, Custodial Attorney;

9 That S _____ is the deposition officer's
10 charges to the Custodial Attorney for preparing the
11 original deposition transcript and any copies of
12 exhibits;

13 That the deposition was delivered in accordance
14 with Rule 203.3, and that a copy of this certificate
15 was served on all parties shown herein on and filed
16 with the Clerk.

17 Certified to by me this _____ day of _____,
18 2006.

19

20

21

22 JEANNE C. PEARL, Texas CSR 456

Expiration Date: 12/31/06

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15 (Page 54)

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